OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Small Disadvantaged and Women-Owned Businesses

AGENCY: Executive Office of the President, Office of Management and Budget, (OMB) Office of Federal Procurement Policy (OFPP).

ACTION: OFPP is correcting the date by which comments must be received under a previous notice and a date in the notice when its final report is due to Congress.

BACKGROUND: On January 4, 1995, OFPP published in the **Federal Register** at page 456, a notice requesting comments on its plans to comply with the review requirements of small disadvantaged and women-owned businesses in accordance with the Federal Acquisition Streamlining Act of 1994. Although the notice correctly advised that comments would be received for 60 days after its publication, it mistakenly included the date of February 20, 1995, as the date by which comments were due. This notice is to correct that date by providing the correct date of March 6, 1995. In addition, the notice mistakenly stated in the section labeled Background that the report to Congress mandated by the Act was due may 1, 1966. The correct date is May 1, 1996.

ACTION: The date by which comments must be received in response to the notice of January 4, 1995, is changed to March 6, 1995.

ADDRESSES: Comments should be submitted to the OFPP, New Executive Office Building, Room 9001, 725 17th Street NW., Washington, DC 20503, Attention: Ms. Linda Meros.

FOR FURTHER INFORMATION CONTACT:

Ms. Linda Mesaros at 202–395–4821.

Steven Kelman,

Administrator.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–35263; File No. SR–CBOE–94–51]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Arbitration Rules

January 23, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 2, 1994,[1] the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend various rules in Chapter XVIII, ''Arbitration,'' in order to conform Exchange rules to the Uniform Code of Arbitration (''Uniform Code'') developed by the Securities Industry Conference on Arbitration (''SICA'').

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

[1] The CBOE amended the proposed rule change subsequent to its initial filing. The substance of this amendment is included in this notice. Amendment No. 1, filed January 17, 1995, was a minor technical amendment.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend various Exchange arbitration rules in order to conform them to the Uniform Code. In general, the substantive amendments, which mirror the Uniform Code, relate to:

- The ineligibility of class actions for arbitration.
- Discovery procedures in simplified proceedings.
- Classification of persons registered under the Commodities Exchange Act as securities industry arbitrators.
- Time limitations for exercising a peremptory challenge.
- Arbitral authority to proceed with a hearing or any continuation thereof at which a party fails to appear.
- Authority of the Director of Arbitration to waive an adjournment fee.
- Enforcement of rulings by the arbitrators.

Content of and interest on arbitral awards.

The Exchange is also proposing miscellaneous editorial and non-substantive clarifications to its rules governing arbitration. The proposed amendments are discussed in detail below.

Rule 18.3(c), Referral of Claims

The Exchange proposes to adopt new paragraph (c) to Rule 18.3 to allow the Director of Arbitration, with a claimant's consent, to refer a claim arising out of a readily identifiable market to the arbitration forum for that market. SICA adopted this amendment to the Uniform Code in order to provide for a more efficient allocation of claims among the various self-regulatory organizations (''SROs''). CBOE is proposing this amendment to its Rules in order to conform its Rules to the Uniform Code.

Rule 18.3A and 18.35(e), Class Action Claims

Consistent with the Uniform Code, proposed new Rule 18.3A will provide that class action claims are not eligible for submission to arbitration at the Exchange. Thus, claimants will be allowed to pursue such claims in court regardless of the existence of a predispute arbitration agreement. The Rule also will exclude claims filed by participants in a putative or certified class action in another forum, if the claim filed at the Exchange is encompassed by such class action. Disputes over whether a claim is

encompassed by a class action will be referred to an arbitrator(s) pursuant to Exchange Rule 18.4 or Exchange Rule 18.10 or, at the election of a party, to the court with jurisdiction over the class action.

Notwithstanding the above, a party may proceed in arbitration if certification is denied to the class, if the class is decertified, if the individual is excluded from the class by the court, or if the individual elects not to participate in the class. Concomitantly, the provision prohibits members and persons associated with members from moving to compel arbitration, pursuant to a predispute arbitration agreement, against a customer who is a participant in a class unless or until the above list of criteria for proceeding in arbitration are met. Proposed paragraph (e) to Rule 18.35, ''Requirements when Using Pre-Dispute Arbitration Agreements with Customers,'' will require members to include a statement setting forth the ineligibility of class actions in arbitration in any new predispute arbitration agreement with customers.

Rule 18.4, Simplified Arbitration

The Exchange proposes to amend paragraph (a) of Rule 18.4 to codify the existing practice of applying simplified arbitration procedures to claims not exceeding $10,000 (''small claims''), without the demand or written request of the customer. This amendment also is consistent with the Uniform Code. Pursuant to paragraph 18.4(f), a customer continues to have the right to demand or consent to a hearing before the arbitrator. The Exchange proposes to delete as unnecessary language in paragraph (b) that requires that a Statement of Claim filed under the simplified procedures indicate when a hearing is not demanded. Paragraph 18.4(b) continues to specify that if a hearing is demanded, such demand must be set forth in the Statement of Claim.

Clarifying and non-substantive amendments are proposed to existing paragraphs (c) through (f). For example, obsolete language in Rule 18.4(c) relating to forum fees is proposed to be deleted and reference inserted to the schedule of fees contained in Rule 18.33. In addition, paragraph (c) is divided and subsequent paragraphs are redesignated accordingly.

The Exchange proposes to amend redesignated paragraph 18.4(d) to require that if a respondent raises a third-party claim, the respondent must serve the third-party with an executed Submission Agreement, a copy of Respondent's Answer containing the third-party claim and a copy of the original claim filed by the Claimant. Currently, the Rule requires service of only the third-party claim and the original claim.

As adopted by SICA, the Exchange proposes to amend existing paragraph (g), renumbered (h), to provide a mechanism for discovery in simplified proceedings. For cases in which an oral hearing is requested, the parties are referred to the general provisions governing pre-hearing procedures, herein renumbered Rule 18.22. For cases that will be decided on the written submissions, new subparagraph (h)(iii) provides procedures for resolving disputes over the production of documents within shortened time periods. In simplified cases where no hearing is demanded, paragraph (h)(iii) will require that all requests for documents be served by the parties and filed with the Director of Arbitration within ten business days of notification of the appointment of an arbitrator. Any response or objection to a request will be required to be served on all parties and filed with the Director within five business days of receipt of the production request. Finally, paragraph (h)(iii) will provide that the selected arbitrator will resolve any document production issues on the papers submitted. Such abbreviated procedures are consistent with Exchange policy to expedite small claims.

Rule 18.10, Designation of the Number of Arbitrators

Consistent with the Uniform Code, the Exchange proposes to adopt new paragraph 18.10(a)(2)(v) in order to classify individuals registered under the Commodities Exchange Act or associated with the commodities industry as securities industry arbitrators. This provision parallels other exclusions in Rule 18.10 which preclude individuals with close ties to the securities industry from serving as public arbitrators.

Rule 18.12, Challenges

The Exchange proposes to amend Rule 18.12 to clarify that all parties to an arbitration are entitled to one peremptory challenge to an appointed arbitrator and to clarify the timing for exercising such challenge. As amended, Rule 18.12 will codify existing procedures that require a peremptory challenge to be raised within five days of notification of an arbitrator named under either the general selection procedures set forth in Rule 18.10 or the pre-hearing procedures of Rule 18.22 (formerly Rule 18.15(e)), whichever comes first. If a party has not objected to an arbitrator selected to handle a pre-hearing conference or discovery dispute, that party may not later raise a peremptory challenge to the same arbitrator when notified of the names of the entire panel. The above-mentioned revisions conform the rule to the Uniform Code.

Because the Rule governs both ''for cause'' and peremptory challenges, the title of Rule 18.12 is proposed to be changed from ''Peremptory Challenges'' to ''Challenges'' and the rule is divided into two paragraphs.

Rule 18.15, Initiation of Proceedings

The Exchange is proposing various minor editorial, non-substantive amendments to Rule 18.15. In the interest of clarity, paragraph 18.15(e), ''General Provision Governing Prehearing Proceeding,'' is proposed to be amended and moved to Rule 18.22. The proposed amendments to Rule 18.22 are discussed below.

Rule 18.19, Failure to Appear

The Exchange proposes to amend Rule 18.19 to clarify the authority of the arbitrator(s) to proceed with and decide a case when a party fails to appear not only at the initial hearing, but also at any continuation thereof. Currently, the rule grants arbitrators the authority to proceed if ''any of the parties, after due notice, fails to appear at a hearing, or any adjourned hearing session.'' Following the Uniform Code, the reference to any adjourned hearings is proposed to be replaced with ''any continuation of a hearing.''

Rule 18.20, Adjournments

Consistent with the Uniform Code, the Exchange proposes to amend Rule 18.20(b) to provide that an adjournment fee shall be deposited with a request for adjournment. Currently, the fee is required upon the arbitrators' granting of the request. In addition, as amended, Rule 18.20(b) will allow the Director of Arbitration to waive the adjournment fee in appropriate cases. If an adjournment is not granted by the arbitrators, the amended rule will provide that the deposited fee will be refunded. If the adjournment is granted, the arbitrators may direct a return of the adjournment fee.

Rule 18.22, General Provision Governing Pre-Hearing Proceeding

In the interest of clarity and conformity with the Uniform Code, the Exchange proposes to move paragraph 18.15(e), ''General Provision Governing Prehearing Proceeding,'' to new Rule 18.22. Subparagraphs within the Rule will be renumbered accordingly. Only conforming, non-substantive, editorial

changes are proposed to the renumbered rule.

Rule 18.25, Interpretation of the Code and Enforcement of Arbitrator Rulings

Consistent with the Uniform Code, the Exchange proposes to amend Rule 18.25 in order to clarify and codify the arbitrators' existing authority to enforce the rulings in the event of non-compliance by a party. Appropriate arbitral action under this provision could include the assessment of fees or costs, preclusion of documents or witnesses, or initiation of a disciplinary referral. Currently, such sanctions for non-compliance with the arbitrator's rulings are infrequently ordered or requested because the arbitrators and parties may be unaware of an arbitrator's power. It is expected that the arbitrators will exercise such power primarily in the area of failure to comply with discovery requests. As amended, Rule 18.25 will specify that such arbitral rulings, as well as interpretations of the Uniform Code, will be final and binding upon the parties.

Rule 18.29, Amendments

Currently, Rule 18.29 requires the Director of Arbitration to serve amended pleadings. Consistent with the Uniform Code and existing policy and procedures under Rules 18.4 and 18.15 that require the parties to serve pleadings after the initial service of the Statement of Claim by the Director of Arbitration, the Exchange proposes to amend this Rule to require that parties directly serve all other parties with any new or amended pleading. Concurrently, the Rule will require filing of the new or amended pleading with the Director of Arbitration, along with sufficient copies for the panel of arbitrators. Similarly, the Rule will require that parties directly serve any responsive pleadings on all other parties and the Director of Arbitration. As amended, the Rule will conserve arbitral administrative time and expenses.

Rule 18.31, Awards

Consistent with the Uniform Code, the Exchange is proposing to amend paragraph (e) to Rule 18.31 and adopt new paragraph (h). Exchange Rule 18.31(e) currently requires that an arbitration award include the name of the parties, a summary of the issues, the relief awarded, the names of the arbitrators, the date the claim was filed and the award rendered, the number and dates of hearing sessions, the location of the hearing and the signatures of the arbitrators concurring in the award. In order to conform this Rule with the Uniform Code, the Exchange proposes to amend Rule 18.31(e) to require that an award also include: the names of counsel representing the parties, the type of product or security involved, the damages and/or other relief requested, and a statement of any other issues resolved.

New paragraph 18.31(h) will specify when interest is payable on an award. Currently, arbitrators may award interest as they deem appropriate. As amended, the Rule will provide that all awards shall bear interest from the date of the award: (i) If the award is not paid within 30 days of receipt, (ii) if the award is the subject of a motion to vacate that is denied, or (iii) as specified by the arbitrator(s). Paragraph 18.31(h) will also specify that the arbitrator(s) may set the interest rate. If not specified by the arbitrator(s), the rate will be the legal rate, if any, then prevailing in the state where the award was rendered.

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade and the protection of investors and the public interest by improving the administration of an impartial arbitration forum for the resolution of disputes between members, persons associated with members and public investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act. In that regard, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereof. Specifically, the Commission concludes that accelerated effectiveness of the proposal is appropriate because all of the substantive amendments proposed therein were previously proposed by other SROs and have been approved by the Commission. Because the proposal is designed to protect investors and the public interest by providing for uniformity in the rules governing the administration of arbitration facilities offered by the SROs, the Commission finds good cause for approving the foregoing rule change on an accelerated basis prior to the thirtieth day after the date of publication thereof in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the file number in the caption above and should be submitted by February 21, 1995.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[2] that the proposed rule change SR-CBOE–94–51, amending various Exchange rules in Chapter XVIII, ''Arbitration,'' in order to conform these rules to the Uniform Code, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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[2] 15 U.S.C. 78s(b)(2).